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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

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CC Docket No. 92-77

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REPLY COMMENTS OF AMERITEL PAY PHONES, INC.

The comments filed in response to the FNPRM clearly demonstrate that the correctional facilities market substantially differs from the operator services market as a whole. As the comments confirm, the perceived problems of operator services calling are not present in the correctional market, and the correctional facility's legitimate need to control inmate access to telephones is incompatible with a BPP system. Therefore, the Commission should not order the implementation of BPP at inmate telephones.

I. THE RECORD OVERWHELMINGLY SUPPORTS EXCLUDING CORRECTIONAL FACILITIES FROM BPP EVEN IF IT IS ADOPTED FOR OTHER TYPES OF OPERATOR SERVICES CALLING.

Support for exclusion of inmate telephones comes from all industry segments and is nearly universal. All federal,¹ state,² and local³ corrections departments

¹ Federal Bureau of Prisons Comments at 1.

² See, e.g., comments filed by the Departments of Corrections of the states of Arizona, Florida, Michigan, Minnesota, Mississippi, New Hampshire, New York, Oregon, South Dakota, and Washington. In addition, the Pennsylvania Governor's

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supported excluding inmate telephones from BPP. Similarly, other inmate calling service providers ("ICS providers") like AmeriTel, all of whom have developed specialized products for the correctional market, support the exclusion.⁴ Support also is found from four of the seven Regional Bell Operating Companies, including one of the principal architects of BPP (Ameritech).⁵ Finally, even Sprint, one of the most vocal BPP supporters, does not oppose the exclusion of inmate telephones from BPP.⁶

The reason for this widespread support is simple. Correctional facilities are not like hotels, truckstops, or other traditional aggregator locations. The jailer or warden has responsibilities to callers, their families, the general inmate population, and the public at large that other aggregators do not. As Sprint recognized, "the prison environment is a unique one,"⁷ and it therefore requires treatment that addresses its unique characteristics.

²(...continued)

Office supported excluding inmate telephones. Letter from Richard M. Walsh to Hon. Reed E. Hundt, Chairman, FCC, July 29, 1994.

³ See, e.g., Cedar County (Iowa) Sheriff Comments; Kenosha County (Wisconsin) Board of Supervisors Comments; Richmond (Virginia) City Jail Comments; and Orange County (California) Office of the Sheriff-Coroner Comments.

⁴ See, VAC Comments at 3; Gateway Technologies Comments at 2-3; Robert Cefail & Associates Comments at 5; Inmate Calling Services Providers Task Force Comments at 2-3.

⁵ Ameritech Comments at 11; Bell Atlantic Comments at 17; NYNEX Comments at 16. BellSouth opposed BPP, but did not take a separate position regarding inmate telephones. See BellSouth Comments at 1-2.

⁶ Sprint Comments at 40.

⁷ Id.

Most of the opponents to excluding inmate telephones either assume away the significant security and fraud concerns of correctional facilities or offer only vague statements of opposition. GTE suggests, for example, that 0+ interLATA calls from correctional facilities do not pose any "significant" fraud management concerns.⁸ Similarly, Southwestern Bell blithely asserts that jailers are only concerned with protecting commission payments and that this is the "true reason" for their universal opposition to BPP.⁹ These assertions could not be farther off the mark. The record overwhelmingly demonstrates that both the correctional facility and the ICS provider have a legitimate need to control the various types of fraudulent calling schemes that could be perpetrated by inmates, to monitor calling to ensure fair access by all inmates and to prevent harassing or threatening calls. The "true reason" for the opposition of federal, state, and local corrections departments is their own careful consideration of their responsibility to assure public safety, the fulfillment of which they have concluded would be harmed if BPP were mandated.

⁸ GTE Comments at 13. Other than the assertion that LECs currently handle 0+ intraLATA calls, GTE offers no support for its contention, nor makes any attempt to refute the extensive record evidence of unique fraud concerns for calls originating from correctional facilities. Also, GTE fails to recognize that in many instances the on-site equipment -- which most often is installed and maintained by the ICS provider handling 0+ interLATA calls -- has already screened the 0+ intraLATA call prior to sending it to the LEC.

⁹ Southwestern Bell Comments at 15.

II. BPP WOULD ATTACK PROBLEMS THAT DO NOT EXIST IN THE CORRECTIONAL FACILITIES MARKET, WHILE CAUSING A POTENTIALLY DISASTROUS LOSS OF CONTROL OVER INMATE CALLING.

Whatever BPP's alleged ability to remedy perceived problems in other operator services markets might be, the record demonstrates that those problems are not present in the correctional facilities market. Moreover, in attacking non-existent problems, BPP would sacrifice many public benefits stemming from prison officials' on-site control of inmate calling. Imposition of BPP at correctional facilities, therefore, is not in the public interest.

A. The Problems that BPP is Supposed to Solve are not Present in the Correctional Facilities Market.

As AmeriTel discussed in its initial comments, the rates charged for calls from confinement facilities are reasonable. The majority of AmeriTel's call traffic, for instance, is rated at or below the dominant carrier's rate for the same call.¹⁰ Further, Value-Added Communications' study of recent requests for proposals -- 86 percent of which either explicitly required charges at or below dominant carrier rates or were awarded to carriers charging these rates -- confirms that prison administrators can and do exercise control over the rates that families and friends of inmates are charged.¹¹

¹⁰ AmeriTel Comments at 12.

¹¹ VAC Comments at 4; see also, Inmate Calling Services Providers Task Force Comments at 31-32.

Indeed, in AmeriTel's experience, isolated instances of overcharging by ICS providers usually are remedied quickly by the prison administration themselves, who demand rate reductions or replace the offending service provider. BPP is not necessary, therefore, to protect callers from potential overcharging.¹²

Similarly, since inmate calls typically are restricted to 0+ collect calling, neither the need for "simplified" dialing nor the need to combat AT&T's proprietary calling card advantages are present in the confinement facilities market.¹³ Moreover, since the majority of calls from county facilities and a substantial percentage from all confinement facilities are intrastate and intraLATA calls (to which an FCC-imposed BPP would not apply),¹⁴ BPP for interLATA calls might make 0+ calling more complex, rather than simplifying it.

B. BPP Would Sacrifice Important Service Enhancements Offered By ICS Providers

The types of misuse of telephone services by inmates are well documented.¹⁵

¹² Citizens United for the Rehabilitation of Errants (CURE) offers in its comments only unsupported assertions of high rates and poor service by unspecified ICS providers. In light of the substantial record evidence to the contrary, CURE's anecdotal evidence at most shows that a small minority of calls are subject to rates above the industry norm.

¹³ See Inmate Calling Services Providers Task Force Comments at 29-30.

¹⁴ VAC Comments at 4.

¹⁵ See, e.g., Federal Bureau of Prisons Comments at 1-2 (introduction of weapons and contraband, extortion, victim and witness intimidation); Arizona Department of Corrections Comments at 2-3 (describing an attempted murder for hire); Mississippi (continued...)

As AmeriTel discussed in its initial comments, BPP would substitute a premises-based system of call control for a network-based system. Call control problems, however, are facility-specific, and often can be inmate-specific (such as an inmate who plots an escape or continues to direct a criminal enterprise). The logical (and often only) place where such concerns can be managed effectively is through the local control of corrections officials and wardens.

For example, AmeriTel's equipment enables corrections officials to track the calls of individual inmates to determine who they were calling and how often, information which can be critical in locating recently escaped inmates or assisting in other crisis situations.¹⁶ AmeriTel's equipment also permits corrections officials to allocate telephone services equitably among the inmate population by controlling the time of day and/or a length of time that each inmate can place calls.¹⁷ Judgments as to the need for each of these services must be made by each individual correctional facility, and, in today's environment, are easily implemented through the facility's daily interaction with the chosen ICS provider.

¹⁵(...continued)

Department of Corrections at 1 (money order scams); Florida Department of Corrections Comments at 1-2 (misuse of 3-way calling to harass victims, prosecutors and judges).

¹⁶ AmeriTel Comments at 5-6. Similar capabilities are offered by other ICS providers. See VAC Comments at 6; Gateway Comments at 6-7; Arizona Department of Corrections Comments at 4.

¹⁷ AmeriTel Comments at 5.

All of this would be lost in a BPP environment. Corrections institutions are unlikely to have the millions of dollars that would be necessary to replace existing on-site equipment (which today is installed and maintained for free by the ICS provider) with CPE of their own.¹⁸ Moreover, it is unrealistic to expect that corrections officials could assemble calling pattern data from the hundreds of carriers BPP-equipped inmates might use, and particularly unrealistic to assume that such information (if it could be collected at all) could be available to officials in time to respond to crisis situations. More likely, officials would be forced to do without this information and the assistance that it provides.

In the end, officials would be likely to resort to "old fashioned" ways of controlling telephone use and fraud: by restricting inmate access to telephones and imposing strict personal supervision of individual calls.¹⁹ This would have the particularly tragic effect of weakening what CURE described as a "crucial link between prisoners and their families and friends," and a link that CURE asserts is directly related to reduced recidivism in inmates.²⁰

Finally, many institutions channel revenues generated from commission payments into rehabilitative, educational and recreational services for the benefit of

¹⁸ Inmate Calling Services Providers Task Force Comments at 14; see Gateway Comments at 14 (replacing embedded CPE would cost approximately \$317 million nationwide).

¹⁹ AmeriTel Comments at 10-11; Inmate Calling Services Providers Task Force Comments at 17-18.

²⁰ CURE Comments at 10-11.

inmates.²¹ No commenter has suggested an alternative source of funding for these beneficial programs in the event BPP is adopted. Clearly, however, institutions either will cut back these programs, or will have to find tax revenue to support them. A cut-back in these programs benefits no one, while the availability of additional sources of public funding is uncertain at best.

III. CONCLUSION

The record in this proceeding demonstrates that correctional facilities are different from the operator services market as a whole, and that even if BPP is adopted for other types of 0+ calls, it should not be mandated for calls from inmate telephones.²² Inmate calling presents threats and concerns that are institution and inmate specific. These issues are best addressed by local prison officials, in partnership with a preselected provider of the specialized services needed by the institution. BPP would require officials to sacrifice that local control and the accompanying benefits that flow from it. Moreover, since the problems that BPP is supposed to solve are not present in the correctional facilities market, the imposition of

²¹ See, e.g., Federal Bureau of Prisons Comments at 2; Minnesota Department of Corrections Comments at 1.

²² Of course, if BPP is not cost justified for the operator services market generally, as many comments suggest, then it follows that it should not be adopted in the correctional facilities submarket.

BPP would not provide any benefits to offset this loss of control. Accordingly, if BPP is adopted, the Commission should exempt inmate telephones from its requirements.

Respectfully submitted,

AMERITEL PAY PHONES, INC.

By: 

Brad E. Mutschelknaus

Steven A. Augustino

of

WILEY, REIN & FIELDING

1776 K Street, N.W.

Washington, D.C. 20006

(202) 429-7000

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